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Security Council

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Security Council Committee established pursuant to resolution 1267 (1999)

Note verbale dated 15 April 2003 from the Permanent Mission of Spain to the United Nations addressed to the Chairman of the Committee

The Permanent Mission of Spain to the United Nations presents its compliments to the Chairman of the Security Council Committee established pursuant to resolution 1267 (1999), and, in fulfilment of resolution 1455 (2003), has the honour to submit its updated report on the measures taken by Spain under paragraph 6 of that resolution (see annex).

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Annex to the note verbale dated 15 April 2003 from the Permanent Mission of Spain to the United Nations addressed to the Chairman of the Committee

Report in fulfilment of United Nations Security Council resolution 1455 (2003)

I. Introduction

1. Please provide a description of activities, if any, by Osama bin Laden, al-Qa`idah, the Taliban and their associates in your country, the threat they pose to the country and the region, as well as likely trends.

Activities of al-Qa`idah detected in Spain are sporadic and have to do with proselytism, logistics and financing. There is no reliable information revealing other threats to Spain.

II. Consolidated list

2. How has the 1267 Committee's List been incorporated within your legal system and your administrative structure, including the financial supervision, police, immigration control, customs and consular authorities?

Concerning how the list has been integrated in our country, we can say the following:*

First, it must be taken into consideration that, within the European Community, EC Regulation No. 881/2002, currently in force, imposes certain specific restrictions aimed at particular persons and entities associated with Osama bin Laden, the al-Qa`idah network and the Taliban, thereby derogating from EC Council Regulation No. 467/2001.

This regulation requires freezing the assets of the persons mentioned in an annex, which are those on the list in question. The regulation is periodically amended to incorporate individuals on the aforementioned list in the annex.

Since Community regulations have direct effect in the Spanish legal system, the incorporation of the 1267 Committee's list follows that procedure.

Under article 2, paragraphs 3 and 4, of Act No. 40/1979, of 10 December 1979 on the Legal Regime for Exchange Control, the enforcement of the Council of Ministers Agreement of 30 November 2001 was ordered. This Agreement implements resolution 1267 (1999) and related resolutions of the United Nations Security Council, and contains an annex that includes the persons noted on the list of individuals drawn up by the 1267 Sanctions Committee.

Concerning integration in administrative structures, EC Regulation 881/2002, previously mentioned, lists the authorities in each member country that have competence in certain areas, for instance, informing the European Commission when assets have been frozen. In the case of Spain, they are the General Sub-Directorate for Inspection and Control of Capital Movements and the General Sub-Directorate for External Investment, both under the Ministry for Economic Affairs. For reasons of internal organization, the former has competence to act in this area.

* This response concerns only economic sanctions under resolution 1267 (1999).

It is also the General Sub-Directorate for Inspection and Control of Capital Movements which, on the basis of the implementing regulation of Act No. 19/1993 on the Legal Regime for Exchange Controls, to which sanction authority in that area has been attributed. Failure to meet the obligations described in EC Regulation No. 881/2002 is characterized as a very serious offence against article 10, paragraph 1, of the Act.

3. Have you encountered any problems with implementation with regard to the names and identifying information as currently included in the List? If so, please describe these problems.

Yes, both on the part of the financial agencies and the police: the lack of data on nationality and date and place of birth makes identification difficult.

When the financial agencies discover that the name of one of their clients is the same as one of the persons included on the list, they do not have sufficient information to determine if it is really the same person. This is because the list provides very little information on individuals whose assets must be frozen; frequently, just their first and last names are provided. In fact, there are many people with the same name. (We have recently learned that there are 14 individuals in Spain with the same first and last names as one of the individuals found on the list. All such persons elsewhere in the world would have to be added, as well.)

Under the circumstances, there is a risk that the financial agency could freeze an individual's assets without being completely certain that that individual is really the person on the list. The bodies which intervene to override the action in such circumstances are the General Sub-Directorate for Inspection and Control of Capital Movements, which in turn directs the State security forces and the Enforcement Service of the Commission for the Prevention of Money-Laundering and Financial Offences (Financial Intelligence Unit of Spain).

4. Have your authorities identified inside your territory any designated individuals or entities?

To date, none of the persons or entities included on the list have been identified in Spain.

5. Please submit to the Committee, to the extent possible, the names of individuals or entities associated with Osama bin Laden or members of the Taliban or al-Qa`idah that have not been included in the List, unless to do so would compromise investigations or enforcement actions.

On 18 July 2002 the General Sub-Directorate for Inspection and Control of Capital Movements (Department of the Treasury and Financial Policy, Ministry for Economic Affairs) received a notice from a Spanish bank informing it that accounts of **Ghasoub Al-Abrash Ghalyoun** had been blocked.

This individual had been detained the previous day on suspicion of membership in an al-Qa`idah cell in Spain.

Although his name was not on the list, on the basis of the possibility of some type of link to that terrorist organization, the bank proceeded to block his accounts; the action was later reversed when the case was submitted to the judicial authorities and no related instructions were received from them.

The Spanish police have detained the following individuals:

Ahmed BRAHIM, who in April 2002 was accused of collaboration with al-Qa'idah in acts of proselytism, logistics, harbouring militants and financing. He is currently in prison.

Ahmed RASCAR and **Enrique CERDA IBAÑEZ** in March 2003. Both are currently in prison.

The police have identified **Issa ISMAIL MOHAMED** as a member of al-Qa'idah directly linked with **Khalid SHEIKH MOHAMED**. An international arrest warrant currently exists for Issa Ismail, who is considered responsible for management and coordination of this network in Spain.

6. Have any listed individuals or entities brought a lawsuit or engaged in legal proceedings against your authorities for inclusion in the List? Please specify and elaborate, as appropriate.

There are no reports of any such administrative or judicial proceedings being brought in the sense meant in the question.

III. Financial and economic assets freeze

9. Please describe briefly:

– the domestic legal basis to implement the asset freeze required by the resolutions above:

Council Regulation No. 881/2002 imposes certain specific restrictions against particular persons and entities associated with Osama bin Laden, the al-Qa'idah network and the Taliban, thereby derogating from EC Regulation No. 467/2001. The Council establishes that:

1. All funds and economic resources whose possession, ownership, or occupancy show a relationship to a natural or legal person, group or entity designated by the Sanctions Committee in the list in annex I shall be frozen.

2. Making available or using any type of funds for the direct or indirect benefit of the natural and legal persons, groups or entities designated by the Sanctions Committee and contained in annex I shall be prohibited.

3. No type of economic resource shall be made available, either directly or indirectly, to the natural or legal persons, groups or entities designated by the Sanctions Committee and listed in annex I, nor shall they be used for their benefit or to enable those persons, groups or entities to obtain funds, goods or services.

In addition, the Agreement of the Council of Ministers of 30 November 2001, implementing resolution 1267 (1999) and related United Nations Security Council resolutions in accordance with the principles contained in resolution 1373 (2001), as well as EC Regulation No. 467/2001, prohibits the movement of capital and corresponding operations of collection, payment or transfer which any of the persons, entities and organizations designated in the Annex to the Agreement have ordered, issued, benefited from or received. This provision contains the content noted in the reply to the second question.

In order to give an appropriate response to the financial flows sustaining terrorist organizations, a bill to prevent and block the financing of terrorism has been drafted and has reached the final phase of approval by Parliament. The bill establishes an Oversight Commission on the Financing of Terrorism, chaired by the Secretary of State for Security in the Ministry of the Interior, as the administrative body with competence to order the blocking and freezing of funds linked with persons and/or entities belonging to a terrorist organization, for a period of six months, renewable by court order.

10. Please describe any structures or mechanisms in place within your Government to identify and investigate Osama bin Laden, al-Qa`idah or Taliban-related financial networks, or those who provide support to them or individuals, groups, undertakings and entities associated with them within your jurisdiction. Please indicate, as appropriate, how your efforts are coordinated nationally, regionally and/or internationally.

The activities of the structure responsible for investigating Osama bin Laden, al-Qa`idah or Taliban-related financial networks fall under the Intelligence Service (Comisaria General de Informacion) of the General Directorate of the Police and the Intelligence Service of the General Directorate of the Civil Guard and are coordinated by the Secretariat of State for Security of the Ministry of the Interior.

11. Please convey the steps banks and/or other financial institutions are required to take to locate and identify assets attributable to, or for the benefit of, Osama bin Laden or members of al-Qa`idah or the Taliban, or associated entities or individuals. Please describe any "due diligence" or "know your customer" requirements. Please indicate how these requirements are enforced, including the names and activities of agencies responsible for oversight.

Under article 301 of Organic Law No. 10/1995 of 23 November 1995, of the Penal Code, serious offences are underlying offences of money-laundering. Under article 13, serious offences are punishable by severe penalties and, under article 33, severe penalties include prison sentences of more than three years. Since terrorism, which is covered under articles 571 to 580, carries a more severe penalty than the above-mentioned penalty, it is an underlying offence of money-laundering.

It should also be noted, in addition to the foregoing, that terrorism is among other underlying offences covered by anti-money-laundering legislation under article 1 of Act No. 19/1993 of 28 December 1993 on specific measures to prevent the laundering of funds.

Article 2 of Act No. 19/1993 covers the following:

- Credit institutions;
- Insurance undertakings authorized to do business in the area of life insurance;
- Securities companies and agencies;
- Institutions for collective investment;
- Management companies for collective investment institutions and pension funds;
- Portfolio management companies;
- Companies issuing credit cards;

– Natural or legal persons that engage in the exchange of currencies, whether or not as a principal activity.

All these institutions are subject to a number of "know your customer" requirements designed to prevent money-laundering. Such requirements cover the matter under consideration. Under article 3 of Act No. 19/1993 and the implementing legislation (Royal Decree No. 925/1995 of 9 June 1995 approving the regulations for implementation of Act No. 19 of 28 December 1993 concerning certain measures for preventing money-laundering) the above-mentioned obligated parties have to meet the following requirements:

1. Identification of customers: obligated parties shall require submission of documents attesting to the identity of their customers at the time of establishing business relations as well as the number of persons effecting any transactions, except in the circumstances envisaged in the Regulations. The financial institutions listed in article 2, paragraph 1, (obligated parties) shall not be obliged to identify themselves.

   Where there is evidence or certainty that the customers or the persons whose identification is compulsory are not acting on their own account, obligated parties shall demand precise information attesting the identity of the persons on behalf of whom they are acting.

   The Regulations specify exceptions to the requirement to furnish identification and the documentary proof required, making a distinction between natural and legal persons.

2. Preservation of documentation: obligated persons shall preserve for a minimum period of six years copies of the documentation required for identification of customers who had effected transactions or had established business relations provided that there was an obligation to furnish such identification.

The Commission for the Prevention of Money-Laundering and Financial Offences is the main administrative body responsible for ensuring compliance with these obligations.

This Commission, which is chaired by the Secretary of State for Economic Affairs, is composed of representatives of: security bodies and forces, the Office of the Public Prosecutor, the Bank of Spain, the anti-tax evasion agency and the anti-drug trafficking agency.

The Commission has two bodies:

1. The Executive Service, which is responsible for ensuring compliance with the above-mentioned obligations and which has investigative powers.

2. The secretariat, which is empowered to institute penal proceedings with respect to the above-mentioned obligations, for submission to the Council of Ministers or to the Minister for Economic Affairs, as the case may be.

   The secretariat is also responsible for preparing draft rules for the handling of violations of provisions of Act No. 19/1993.

12. Resolution 1455 (2003) calls on Member States to provide "a comprehensive summary of frozen assets of listed individuals and entities". Please provide a list of the assets that have been frozen in accordance with this resolution. This list should also include assets frozen pursuant to resolutions 1267 (1999), 1333 (2001) and 1390 (2002). Please include, to the extent possible, in each listing the following information:

- **Identification(s) of the person or entities whose assets have been frozen;**
- **A description of the nature of the assets frozen (i.e., bank deposits, securities, business assets, precious commodities, works of art, real estate property, and other assets);**
- **The value of assets frozen.**

The document annexed hereto includes a table containing the information requested prepared by the Department of the Treasury and Financial Policy of the Ministry for Economic Affairs.

With regard to individuals in police custody (point 5) by court order, the financial assets in their accounts in Spain and abroad have been frozen: the legally frozen assets of Ahmed Brahim are estimated at 2.5 million euros.

With regard to Ahmed Rascar and Enrique Cerda Ibañez, efforts are continuing to identify, list and assess their financial assets.

13. Please indicate whether you have released pursuant to resolution 1452 (2002) any funds, financial assets or economic assets that had previously been frozen as being related to Osama bin Laden or members of al-Qa'idah or the Taliban or associated individuals or entities. If so, please provide reasons, amounts unfrozen or released and dates.

No funds have been released pursuant to the above-mentioned resolution.

14. Pursuant to resolutions 1455 (2003), 1390 (2001), 1333 (2000) and 1267 (1999), States are to ensure that no funds, financial assets or economic resources are made available, directly or indirectly, to listed individuals or entities or for their benefit, by nationals or by any persons within their territory. Please indicate the domestic legal basis, including a brief description of laws, regulations and/or procedures in place in your country to control the movements of such funds or assets to designated individuals and entities. This section should include a description of:

- **The methodology, if any, used to inform banks and other financial institutions of the restrictions placed upon individuals or entities listed by the Committee, or who have otherwise been identified as members or associates of al-Qa'idah or the Taliban. This section should include an indication of the types of institutions informed and the methods used.**

Council Regulation No. 881/2002, whose contents have already been described in replies to previous questions, is currently in force in the European Union.

Regulation No. 881/2002 is amended from time to time to add names that the Sanctions Committee includes in the list. In that regard, 15 amendments have been published thus far.

Whenever one of these amendments is published, the Secretary of State for Economic Affairs sends an official letter to that effect to the following:

- Asociación Española de Banca (AEB)
- Confederación Española de Leasing
- Asociación Hipotecaria Española
- Unión Nacional de Cooperativas de Crédito
- Confederación Española de Sociedades de Garantia Recíproca (GESCAR)
- Asociación de Promotores Inmobiliarios de Madrid
- Asociación Española de Factoring
- Asociación Nacional de Entidades de Financiación (ASNEF)
- Asociación Española de Instituciones de Inversión Colectiva
- Mercado español de Futuros Financieros
- National Commission for the Securities Market (Ministry of Economic Affairs)
- General Directorate of Records and Notaries (Ministry of Justice).

Apart from the fact that the Community Regulations take effect as from the time of their publication in the Official Journal of the European Community, an effort is thus made to exert additional pressure on the most important groups of private individuals affected by the implementation of this law.

Moreover, the General Sub-Directorate for Inspection and Control of Capital Movements (General Directorate of the Treasury and Financial Policy, Ministry of Economic Affairs) examines many suspicions raised informally by individuals.

- **Required bank-reporting procedures, if any, including the use of Suspicious Transaction Reports (STR), and how such reports are reviewed and evaluated.**

Under Act No. 19/1993 of 28 December 1993 on measures to prevent money-laundering and its implementing regulations, the banks have the obligation to scrutinize all operations which might by nature, regardless of the amount involved, be linked to the laundering of funds arising from a number of activities, including terrorism. If on examination the conclusion is reached that there is either evidence or certainty of such a link, it must be communicated to the Executive Service of the Commission for the Prevention of Money-Laundering and Financial Offences.

Such transactions must be communicated immediately through the internal monitoring and communications mechanisms that all obligated parties must have in accordance with the relevant legal provisions.

Each communication must contain the following information:

- Description and identification of the natural or legal persons taking part in the transaction and an account of their participation therein;
- Description of the transactions and dates thereof, indicating their nature, the currency in which they were transacted, the bank account, the place or places they were carried out, their purpose, and the methods of payment or credit used;

- Explanation of the circumstances of any kind revealing either evidence or certainty that a link to money-laundering exists;

- Any other information that the Executive Service may request in carrying out its duties. In this regard, the Executive Service issues instructions for requesting supplementary information, and stipulates, inter alia, the form and method by which the transactions in question should be communicated.

For the evaluation of such transactions, the Executive Service has joint teams made up of:

- Financial experts (inspectors from the Ministry of Finance and from credit associations);

- A brigade from the National Police Corps made up of agents specialized in this area;

- A liaison officer from the Civil Guard.

Their task is to scrutinize the transactions, drawing on their skills in the areas of finance and police investigation. If they conclude that there may be a link with terrorist activities, they must bring the matter to the attention of the judicial authority.

- **Requirements, if any, placed on financial institutions other than banks to provide STR, and how such reports are reviewed and evaluated.**

Under Act No. 19/1993 of 28 December 1993 on measures to prevent money-laundering and its implementing regulations, all financial institutions affected by the reply to question 11 are subject to a mandatory special investigation of their transactions and required to communicate any suspicious transactions, as described in the preceding section, under the same conditions as banks. In Spain, not only banks but also savings institutions, the Spanish Confederation of Savings Banks, the Official Credit Institute, credit cooperatives, financial credit institutions and electronic funds mechanisms are considered to be credit institutions.

The requirements for banks, described in the preceding section, are applicable to all other financial institutions.

- **Restrictions or regulations, if any, placed on the movement of precious commodities such as gold, diamonds, and other related items.**

In addition to the activities and institutions discussed in the preceding two sections, in Spain the following non-financial activities are subject to special investigation of transactions and any suspicious transactions must be communicated:

Casinos

Real-estate promotion and buying and selling of real estate

Activities related to trade in precious gems, stones and metals

Activities related to trade in art objects and antiquities

Philatelic and numismatic investment activities

The activities referred to in the question are also fully included. The applicable obligations, and the method for investigation and evaluation are the same as those described in the preceding two sections.

- **Restrictions or regulations, if any, applicable to alternate remittance systems such as — or similar to — "hawalah", as well as on charities, cultural and other non-profit organizations engaged in the collection and disbursement of funds for social or charitable purposes.**

In Spain, the remittance of funds is subject to certain restrictions *reserva de actividad* and the *hawalah* system is illegal and may not be utilized. Persons in institutions open to the public wishing to make financial transfers must obtain the authorization of the Bank of Spain, be entered in a register and fulfil the following requirements:

- Be a closely held corporation.
- Have as sole purpose the buying and selling of foreign currency, travellers cheques or foreign transfers.
- Have fully paid-up capital available in liquid form, and held as registered shares. There are also requirements regarding the amount of capitalization.

The Bank of Spain is responsible for monitoring compliance with such regulations, particularly those concerning certain restrictions (*reserva de actividad*).

As the answer to question 11 indicates, money-changing institutions (whose activities include the remittance of funds) are subject to Act No. 19/1993, and are therefore subject to special investigation of their transactions and the communication of any suspicious transactions, under the same terms as those described in the preceding sections.

Non-profit organizations that collect and remit funds for charitable purposes are subject to the regulations set forth in Act No. 50/2002, of 26 December 2002, on charitable foundations.

The general principles for the supervision of charitable foundations are:

- They must be entered in a public register under a public authority (of the State or of an Autonomous Community, as the case may be);
- They must be subject to the authority and control of a protectorate, which is always a role carried out by a public authority (of the State or an Autonomous Community, as the case may be).

A system is also being established to monitor the economic activities of foundations, which will be required to:

- Keep an orderly, adequate record of their activities;
- Draw up yearly account statements, including a balance sheet, an income statement and a performance report.

The yearly account of foundations are subject to external audit when at least two of the following circumstances apply:

- Their total assets exceed 2.4 million euros.
- The net annual earnings from their own activities plus, as applicable, the turnover from commercial activity exceed 2.4 million euros.
- The average number of workers employed during the period in question exceeds 50.

Travel ban

15. Please provide an outline of the legislative and/or administrative measures, if any, taken to implement the travel ban.

By law, the monitoring of entries and exits at points designated for that purpose on Spanish territory is the responsibility of the national police force. The names contained on the 1267 list and its updates are incorporated into the police database.

The legislative measures providing for bans on entry into Spain and transit through Spanish territory are, essentially, Organic Law No. 4/2000 and its implementing regulations, adopted pursuant to Royal Decree No. 364/2001.

16. Have you included the names of the listed individuals in your national "stop list" or border checkpoint list? Please briefly outline steps taken and any problems encountered.

The names of persons affected by Security Council resolution 1267 (1999) have been entered into databases, for access by officials at border checkpoints. As to problems encountered, the need to include the nationality as well as the date and place of birth of the persons listed should once again be stressed.

17. How often do you transmit the updated List to your border control authorities? Do you possess the capability of searching List data using electronic means at all your entry points?

The transmitted list is "fixed" and, unless changes arise (such as, for instance, the arrest of one of the listed individuals), it is not altered. Yes, there are electronic means for searching data at entry points.

18. Have you stopped any of the listed individuals at any of your border points or while transiting your territory? If so, please provide additional information, as appropriate.

To date, none of the persons on the list have been stopped on Spanish territory.

19. Please provide an outline of the measures, if any, taken to incorporate the List in the reference database of your Consular offices. Have your visa-issuing authorities identified any visa applicant whose name appears on the List?

To date, no visa applicants in Spain have been identified as persons on the list.

Annex

Frozen assets (does not show archived dossiers)

Name	*Tax ID number*	*Nationality*	*Order No.*	*Activity date*	*Affected asset*	*Adjusted amount*
Abdul Manan	E661460	Pakistani	2001/1442	5 October 2001	Credit card	0
					Electronic account	0
Aboul Rauf	J333424	Pakistani	2001/1459	5 October 2001	Credit card	0
Aboul Rauf	333704	Pakistani	2001/1457	8 October 2001	Bank account	0
Mohamed M. M. Naim	8659074	Egyptian	2001/1456	9 October 2001	Bank account	29,593 pesetas
					Credit card	0
Mohammed Amin	0E967870	Pakistani	2001/1452	5 October 2001	Credit card	
Mohammed Sharif	O939559	Pakistani	2001/1446	8 October 2001	Bank account	0
Mohammed Sharif	K312993	Pakistani	2001/1445	9 October 2001	Bank account	0
					Credit card	0
Mohammed Sharif Malik	E15281	Pakistani	2001/1443	9 October 2001	Bank account	0
					Credit card	0